preserve

App Γ IX 4

*Previous References* 1938-39 ( ML )

**File No** 73 37

**Serial Nos** 151 188

*Letter References*
ML 69 38-3042

# GENERAL AND REVENUE SECRETARIAT

*Serial Nos* two

**Part B for**

**SUBJECT**

Re the levy of a ground rent of one anna per day on buses in the Bus Terminus Mysore city

To The President - City Municipal Council, Mysore
Secretary Mysore Traffic Board

WD 0295—GPB—22,500—15 8 37

No L 3193-4 / ML 73 37 188 Dated 21 10 1938

States that the proposal of the President, City Ml Council Mysore cannot be sanctioned as the levy would not be legal

275/p 36 6125/I 22/TTB of 38

General and Revenue Secretariat — File No 73 of 1937 — [App F III–2

Serial No 157

From the Pdt, cdp- mnl cl, L ---
No J 33244 dated 24-6-1938
Requests sanction to the rules framed by the Dmy Bore cdp- mnl cl under sec 149 (b) & (l) read with sections 65 & 82(1) of the Dmy Bore cdp- motor vehicles Act 1933 for the levy of a fee on Motor buses & taxis entering the / ew Municipal Bus Terminus

1) All the formalities prescribed under section 65 of the cdp- Motor vehicles Act 1933 have been observed

2) Submits with a draft GO for approval, with reference to 4/7/1888 for B) Three protest petitions have been received The Law Section and the Traffic Board may perhaps be consulted, before approving the rules in question

for 1738

4) In favour of remarks 2 1/7/-

Levy Traffic Board 4 C)

5) Section 31 of the Act prohibits levy of any tax or toll by any municipality (vide page 24 of motor vehicles manual) Besides this there is no provision in the Road Traffic and Taxes Act prohibiting the levy of a fee by the mcl as framed here.

6) Submitted for approval

Bor-Secy Law

2/7/38

14 Law

NOTE—Contn Sheet BPR 127

6125
L

File No 73 of 1937 — General and Revenue Secretariat

Serial No

7) For favour of putting up the file leading to GO No 9764-ML-43/30-109 Dated 10 6 31 (referred to in the letter dated 19 4 38 by the District Automobile Association)

BNR 13 7 38

Asst Secy K S G for WC

Mr Mly

8) ML 43-30 (26 108 109) Containing the GO referred to above is submitted 16/7/38 for

2 16/7/38

Mr Dairy Law N C)

"G"

9) The fee on motor buses and taxes entering the new Municipal Bus Terminus is proposed to be levied under Section 49 (n) and (r) read with Section 65 and 82 (1) of the City Municipalities Act The Municipal Council has treated the fee as a tax and has observed all the preliminary proceedings necessary before imposing a tax A tax is defined as including any toll, rate, cess, fee or other impost leviable under the Act If the fee in question should therefore

Serial No

be / deemed to be a tax within the meaning of the City Municipality Act, then I am afraid the levy of such a tax is provided under Section 31 of the Road Traffic and Taxes Act, which provides that notwithstanding anything contained in the Mysore City, Town and Minor Municipalities Act 1933 no Municipal Council shall levy (1) a tax on motor vehicles or (2) a ~~tax~~ toll on such motor vehicles as are exempt from payment of municipal tolls under that Act or rules made thereunder

10) It may be urged that the fee should be viewed not as a tax, but as a sort of rent claimed by the lessor from the lessee, as the motor vehicles are given the privilege of occupying temporarily a land belonging to the Municipal Council. In the first place, the Municipal Council does not apparently view their claim in this light. In the next, Government have directed in their order of 10 6 31 that no fee or ground rent be levied by municipal Councils on motor vehicles visiting the places and using the bus-stands therein

NOTE—Contn Sheet

V75

File No 73 of 1937 — 38 — General and Revenue Secretariat

Serial No

11) Taking either view, the levy of the fee in question does not seem to be in order

BNR 22 8 38

Asst Secy L S-G for WC

12) The opinion of the Law Dept is that the Mysore cities will be Cannot levy either the fee of one anna (which will come under the definition of tax in the several MC Acts - from which motor cars are exempt as per Sec 31 of the Road Traffic & Taxes Act, of 32) or the ground-rent which has been ordered to be levied in the G.O. dated 10 6 31 the latter view is based on the fact that there should be an agreement as between the lessor & the lessee before the ground rent is levied but in this case it happens to be an imposition The Businessmen in the Mysore city have objected to the proposed levy, as they are exempt under the terms of the Road Traffic & Taxes Rules (Acts), that they are already heavily taxed and that the fee acts as a hardship on them

13) The MC have urged that having regard to the conveniences & amenities

Fee on Buses in the Bus Terminus at Byculla

6125

General and Revenue Secretariat — File No 73 of 1937-38 — [App I III-2

Serial No

provided in the Bus Terminus at a heavy cost, the levy of a fee of one anna per bus or taxi per each day will be tantamount to hardship. This is a kind of municipal trading and the M.C. have invested a sum of Rs 10000/- in constructing this decent shelter. It seems but right that the M.C. should expect a return from this property. Under this there is an incentive for the M.C.'s, no local body would come forward to construct such sheds - the designs of which have been recently recommended for adoption by the several M.C.'s - In this view it is for consideration if the fee of Rs 10 P.M. may not be suitably modified. It may not perhaps be wrong to levy a ground rent for the use of the M.C. land by the bus stands, just as ground rents levied / collected in the case of bicycles parked in the General Market at Bangalore. It is not the municipality that must or the buses stopping at the place, they stop at a place accessible to the public by statutory order. The M.C. provides the land for the purpose and is entitled to some return for the same. If the question does not appear to be free from difficulty, it is for orders of the Govt Advocate may be consulted in the matter.

15 The Bus Terminus Levy Rules (Para 9 of 11 of 23/8/382 — no notice is / known that no hotel

Fee on Buses etc on the Bus Termini — Mysore

6125
1

File No 73 of 1937-38 — General and Revenue Secretariat

Serial No

OFFICE OF THE SECOND MEMBER OF COUNCIL
26 AUG 1938
No. 1369

CA ELF C
24 1
GOVT OF MYSORE

Levy of fee on buses on the Bus Termini is not legal the Govt Advocate may perhaps also be consulted U.O. on the matter. It is a point that deserves consideration whether the Municipal Council should not effect an increase from their investment made in the shape of Bus Termini Buildings which no doubt afford conveniences to Bus passengers and also to Bus owners

2/26/38

Levy L.S.)

16) Considering the heavy investment in the case of these Bus Termini and the amenities provided the levy suggested under Rules for 2 annas per bus is reasonable and cannot be said to be such undue as under Bus owners Act of 1931 (Para 9) may justify to withdraw the Mysore City Municipal Council to levy the fee

2683 2/26/38

Il Member)

17) I agree that the proposal is quite reasonable. But in view of the recent ruling of the High Court with regard to octroi, I doubt if the legality of such a levy can be sustained —

Levy of fees on Buses etc on the Bus
6125/2 Terminus, Depot

General and Revenue Secretariat | File No | of 193 | [App F III—2

Serial No

— having regard to the provision of R T & T A quoted by the Asst Secy Local Govt
The Govt Advocate may be consulted
Rec'd
30/8/38

SECY LOCAL SELF GOVT
12 OCT 1938
GOVT OF MYSORE

30 8 38

Dno 202/38-39
dy 31/8/38

18) Forwarded with compliments to the Government Advocate for favour of remarks
by order
Mr Hayden Duncan
for Secy to Govt of Mysore
30 & 38

Dno DO 26/38-39
dy 12 10 38

Returned with compliments

19) Section No 31 of the Mysore Road Traffic and Taxes Act definitely prohibits the exercise of any power by the Municipalities to levy any kind of a tax on motor vehicles The interpretation of that - section by the High Court in Criminal Revision Petn No 99 of 1937-38 (G R Ramiah VS The Mysore City Municipality) puts the matter beyond doubt Therefore the proposed levy of an anna as a tax is now out of question

20) 2 I do not think it can be viewed as a rent which can only be a result of a contract, a concensus ad idem of two minds, of landlord and tenant in this case the Municipality on the one hand and the various bus-owners on the other That means then, that - there cannot be any imposition as such forced on the

NOTE—Contn Sheet

WD 02220—GPB—1 000—22 2 37

Levy of fee on Buses etc in the Municipality at Agra

6175

File No 73 of 1937 — General and Revenue Secretariat 38

Serial No

on the bus-owners but a lease granted by the Municipality in favour of the bus-owners as a result of an agreement, the period of the lease being 24 hours and the rent being one anna for every such cycle All this is nothing but fiction and not even a legal fiction because the tenants i e the bus-owners on account of an order passed under the Statutory provision have no option but to take a supposed lease of this land since they are prohibited from allowing their buses to stop anywhere else in the Municipal area Therefore there is really no volition of the other party to the so-called contract I do not think it is worth while pursuing discussion of this aspect of the case The amount to be charged cannot be called rent

21) 3 If it cannot be rent, I can see no other alternative than to call it a tax It has got all the attributes of it, a uniformity in the rate levy of it irrespective of the will of the party concerned and the legal sanction behind it under the Municipal Act As a tax it cannot of course be valid in law

24) 4 The procedure which has been adopted by the Municipality till now in that behalf is that laid down in Act No VII of 1933 for the imposition of taxes, evidently, under the impression which at the time had not been discovered to be erroneous that the Municipality could levy such a tax This is an additional reason for holding that the imposition is nothing else than a tax.

23) 5 Going to the non-technical aspect of the matter, there is already an order of the Government bearing

Levy of fee on Buses in the Bus Terminus - Improvement

6125

General and Revenue Secretariat — File No 73 of 1937-38-2 [App I III-2

Serial No

bearing No 9784-9775/M1 43-30-109 and dated 10th June 1931 refusing to sanction the levy of such a tax in the case of other Municipalities which does not exclude Mysore City Municipality from its purview

24) I think sanction should not be given for the levy

Markandeya Rao
Government Advocate

CSN/11 10 38

12.10.38

11 member)

25) This would be rather hard on the Municipality but there is apparently no help for it May be subd to the Finl Member & Dewan

14.10.38

14.10.38

I member

Dewan

26) 16/10

27) 17-10-38

18.10.38

37 yrs, unless

NOTE—Contn Sheet

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ML File No 73 of 193

General and Revenue Secretariat

Serial No

Subd with a draft letter for appl
8 13/10 for ✓ Encls returned cl[illegible] 2nd
2
1917.
[illegible]

188

To

The Dpty Asst Mil Sec, Mysore
No L 3193 dy 21-10-38
states that Govt that the proposal
Cannot be sanctioned as they
are advised that such a levy would
not be legal

✓
B
23/10

6125

OFFICE OF THE PRESIDENT
CITY MUNICIPAL COUNCIL MYSORE

No QT 3324/55

Dated 24th June 1938

Jud 73-37-151.

From

M A SREENIVASAN ESQ BA
*President City Municipal Council*
*MYSORE*

To

The Secretary to Government,
Local Self Government Department,
Bangalore

Sir,

"E" Adverting to correspondence ending with your letter No L 6873/M1 73-37-72 dated 15-2-1938 directing that the necessary rules may be framed for the levy of the fee on buses in the New Municipal Bus Terminus, I have the honour to state that a set of draft rules framed by the Municipal Council in this regard was duly published on page 143, part III-3 of the Mysore Gazette dated 7th April 1938 inviting objections from the inhabitants of the Municipality

The objection petitions received were duly considered by the Municipal Council at their meeting held on 28th May 1938 The main ground of objection put forward by the petitioners was that buses etc, were already heavily taxed and that the fee levied by the Municipality acted as a hardship on the Bus-owners

The Municipal Council were of opinion that in view of the conveniences and amenities provided for in the Bus Terminus at a heavy cost, the levy of a fee of one anna per bus or taxi per whole day was low and reasonable and could by no means be considered to be a hardship

They have therefore finally approved of the rules copy whereof is submitted herewith

I request that Government may be pleased to accord sanction to the said rules at an early date

The objection petitions (in original) a copy of the notice publish in the Gazette and a copy of the Municipal Council's Resolution No 532 dated 28-5-1938 on the subject are enclosed for reference

I have the honour to be,
Sir,
Your most obedient servant,
M A Sreenivasan
President

GRS III—3]

**Routine Notes**

[To be used only for notes requisitions etc not intended for permanent record ]

2000

OFFICE OF THE PRESIDENT
CITY MUNICIPAL COUNCIL MYSORE

No G T 957 13-10-38

*Dated* 12th October 38

*From*

M A SREENIVASAN Esq B A
PRESIDENT CITY MUNICIPAL COUNCIL,
MYSORE

*To*

The Secretary to Government,
Local Self Government Department,
Bangalore

Sir,

In inviting your kind reference to correspondence ending with this office letter No G 3324 dated 25-6-38 submitting for the kind approval of Government, the draft rules framed by the Municipal Council re the levy of a fee on motor buses and taxis in the New Municipal Bus Terminus, I have the honour to request the favour of early orders in the matter

I have the honour to be,
Sir,
Your most obedient servant,

President

PVR

App F XI-3] REGISTER OF SUSPENDED CASES OF THE BRANCH

WD 05-2—GPB—36 000—7 19 2)

| Register No | Date of receipt | File and Serial No | Brief Subject of the file | Reason why it is included in this list | Remarks |
|---|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 | 6 |

Appendix F G—1]

SUBJECT

*Diary No of letter replied to*

General and Revenue Secretariat

( )

*the* *193*

Date of issue 21/10/38

Signed by [illegible]

List of enclosures

Copied by

Examined by

Section Rec

File No 73-37

Serial No 188

No L 3153/1th

To The Odt, City Mcl, Mysore

Sir,

With reference to your letter No GT 3324 Dy 24-6-38 requesting sanction to the levy of ~~a~~ daily fee on buses entering the New Municipal Bus Terminus in the city, I am directed to state that Govt regret that the proposal cannot be sanctioned, as they are advised that the levy would not be legal.

The records received with your letter under reply are herewith returned

I have &c

2/19/11-

for Secy to Govt

L Dy Secy

19/10/38

WD 0521—GPB—30 000—12 3 [illegible] 3194

Memo No L 3153/1 10 38

Copy sent to the Secy to Govt for info

J. Bond 2/19/11-

GOVERNMENT OF HIS HIGHNESS THE MAHA[redacted] OF MYSORE

General and Revenue Secretariat

No L 3193/mC73-37-188 *Dated Bangalore* ~~30th~~ 21st October 1938.

From

*The Secretary to the Government of His Highness the Maharaja of Mysore*
*Local Self Government Department*

To

The President,
City Municipal Council,
M y s o r e .

Sir

With reference to your letter No. C.1. 3324 dated the 24th June 1938 requesting sanction to the levy of daily fee on the buses entering the New Municipal Bus Terminus in the City, I am directed to state that Government regret that the proposal cannot be sanctioned, as they are advised that such a levy would not be legal

The records received with your letter and the reply are herewith returned

I have the honor to be,
Sir,
Your most obedient servant,

Sd/- P H Krishna Rao,
Secretary to Government,
Local Self-Government Department.

Encl

No L 3194/21.10.38 Memo

Copy of the above is forwarded, with compliments, to the Traffic Secretary, Mysore City Improvement Board for information

By order,

(Draft) 20/10/-
Secretary to Government,
Local Self-Government Department.